

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MORTON & BASSETT, LLC,
Plaintiff,
v.
ORGANIC SPICES, INC.,
Defendant.

Case No. [15-cv-01849-HSG](#)

**ORDER DENYING PLAINTIFF'S
MOTION FOR LEAVE TO FILE A
DAUBERT MOTION**

Re: Dkt. No. 101

On May 23, 2017, Plaintiff and Counterclaim-Defendant Morton Bassett, L.P. ("Morton") filed a request for leave to file a *Daubert* motion to exclude the testimony and report of Michael Rappeport, the expert of Defendant and Counterclaimant Organic Spices, Inc. ("Spicely"). Dkt. No. 101. Morton also requested that the Court set June 2, 2017 as Spicely's deadline to oppose the proposed *Daubert* motion, and hear arguments regarding the motion at the pretrial conference on June 13, 2017 at 3:00 p.m. *Id.* at 4. Along with its request for leave to file, Morton has filed its proposed *Daubert* motion, Dkt. No. 101-2, a declaration by counsel, Dkt. Nos. 101-3 ("Weinberg Decl."), and exhibits thereto, Dkt. No. 101-4 ("Exs. A-C").

This Court's standing order limits motions in limine to five pages. *See* Civil Pretrial & Trial Standing Order ¶ 24. However, Morton's proposed *Daubert* motion is six pages. Morton's request to file this overlong document is denied.

At this stage of the proceedings, the Court requires a party to seek prior approval before filing a *Daubert* motion. *See id.* ("Motions in limine cannot be used to . . . raise *Daubert* challenges unless the Court has specifically granted prior approval."). The proposed *Daubert* motion seeks to exclude the report and expert testimony of Mr. Rappeport. However, Mr. Rappeport's report is dated May 31, 2016. Weinberg Decl., Ex. B at 6. And Morton deposed Mr. Rappeport on June 10, 2016. *Id.*, Ex. C. Neither Morton's request nor its counsel's declaration


1 explains why it waited nearly a year to file the proposed *Daubert* motion.

2 Finally, Morton's request as to the briefing schedule and hearing were unnecessary. As
3 ordered at the further case management conference on May 23, 2017, oppositions to the motions
4 in limine must all be filed by June 2, 2017. *See* Dkt. No. 107 (minute entry of proceedings). And
5 all motions in limine will be heard at the pretrial conference on June 13, 2017 at 3:00 p.m. *See*
6 Civil Pretrial & Trial Standing Order ¶ 26.

7 For the foregoing reasons, the Court **DENIES** Morton's request for leave to file the
8 proposed *Daubert* motion. The Court **SETS** a filing deadline of May 25, 2017 for any renewed
9 request to file a proposed *Daubert* motion relating to the testimony and report of Mr. Rappeport.
10 The proposed *Daubert* motion shall not exceed five pages. And any renewed request to file a
11 *Daubert* motion must explain why Morton had good cause to wait nearly a year before challenging
12 Mr. Rappeport's report and expert testimony. If such a request is ultimately granted, the *Daubert*
13 motion in question will be subject to the existing opposition deadline and hearing date for all
14 motions in limine.

15 **IT IS SO ORDERED.**

16 Dated: 5/24/2017

17 
18 HAYWOOD S. GILLIAM, JR.
United States District Judge